

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 DENISE K. SHUSTER,

8 Plaintiff,

9 v.

10 CITIMORTGAGE, INC., a registered  
11 foreign corporation; QUALITY  
12 LOAN SERVICE CORPORATION  
OF WASHINGTON, a registered  
domestic corporation,

13 Defendants.

NO. 2:18-CV-0146-TOR

ORDER GRANTING PLAINTIFF'S  
MOTION TO DISMISS

14  
15 BEFORE THE COURT are Defendant CitiMortgage, Inc.'s Motion to  
16 Dismiss (ECF No. 4) and Plaintiff's Motion to Dismiss (ECF No. 9). These  
17 matters were submitted for consideration without oral argument. The Court has  
18 reviewed the record and files herein, and is fully informed.

19 Plaintiff Denise K. Shuster filed a Complaint alleging bad faith in contract,  
20 which was then removed to this Court on May 11, 2018. ECF Nos. 1; 1-1 (Ex. A).

1 On June 20, 2018, Defendant CitiMortgage filed a Motion to Dismiss. ECF No. 4.  
2 On August 15, 2018, Plaintiff filed a Motion to Dismiss under Federal Rule of  
3 Civil Procedure 41(a)(2). ECF No. 9. Plaintiff asserts that Defendant Quality  
4 Loan has commenced a non-judicial foreclosure and Plaintiff will seek mediation  
5 under that proceeding. *Id.* at 1.

6 Pursuant to Rule 41, “an action may be dismissed at the plaintiff’s request  
7 only by court order, on terms that the court considers proper.” Fed. R. Civ. P.  
8 41(a)(2). “A district court should grant a motion for voluntary dismissal under  
9 Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal  
10 prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

11 The Court notes that Defendants here have not filed any counterclaims or  
12 opposition to Plaintiff’s motion. The Court finds that there is no plain legal  
13 prejudice to Defendants because there are no counterclaims and Defendant  
14 CitiMortgage also seeks to dismiss the action. The Court determines that it is  
15 proper to dismiss Plaintiff’s action as she will seek mediation.


16 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 17 1. Plaintiff’s Motion to Dismiss (ECF No. 9) is **GRANTED**. All of  
18 Plaintiff’s claims (ECF No. 1-1) are **DISMISSED without prejudice**.  
19 2. Defendant CitiMortgage’s Motion to Dismiss (ECF No. 4) is **DENIED**  
20 **as moot**.

1 The District Court Executive is directed to enter this Order, enter Judgment  
2 accordingly, furnish copies to counsel, and CLOSE the file.

3 **DATED** September 6, 2018.



  
THOMAS O. RICE  
Chief United States District Judge